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SECOND DIVISION

[G.R. No. 198774, April 04, 2016]

TEOFILO ALOLINO, PETITIONER, VS. FORTUNATO FLORES AND ANASTACIA MARIE FLORES, RESPONDENTS.

DECISION

BRION, J.:

This is a petition for review on *certiorari* filed from the July 8, 2011 decision of the Court of Appeals (*CA*) in **CA-G.R. CV No. 94524**.[1] The CA reversed the Regional Trial Court's (RTC) decision[2] in **Civil Case No. 69320**[3] and dismissed petitioner Teofilo Alolino's complaint against the respondents for the removal of their illegally constructed structure.

Antecedents

Alolino is the registered owner of two (2) contiguous parcels of land situated at No. 47 Gen. Luna Street, Barangay Tuktukan, Taguig, covered by Transfer Certificate of Title (*TCT*) Nos. 784 and 976. TCT No. 784 was issued on August 30, 1976 covering an area of 26 square meters; while TCT No. 976 was issued on August 29, 1977, with an area of 95 square meters.

Alolino initially constructed a bungalow-type house on the property. In 1980, he added a second floor to the structure. He also extended his two-storey house up to the edge of his property. There are terraces on both floors. There are also six (6) windows on the perimeter wall: three (3) on the ground floor and another three (3) on the second floor.

In 1994, the respondent spouses Fortunato and Anastacia (Marie) Flores constructed their house/*sari sari* store on the vacant municipal/*barrio* road immediately adjoining the rear perimeter wall of Alolino's house. Since they were constructing on a municipal road, the respondents could not secure a building permit. The structure is only about two (2) to three (3) inches away from the back of Alolino's house, covering five windows and the exit door. The respondents' construction deprived Alolino of the light and ventilation he had previously enjoyed and prevented his ingress and egress to the municipal road through the rear door of his house.

Alolino demanded that the respondent spouses remove their structure but the latter refused. Thus, he complained about the illegal construction to the Building Official of the Municipality of Taguig. He also filed a complaint with the Barangay of Tuktukan.

Acting on Alolino's complaint, the Building Official issued a Notice of Illegal Construction against the respondents on February 15, 1995, directing them to immediately stop further construction.[4]

Sometime in 2001 or 2002, the respondents began constructing a second floor to their structure, again without securing a building permit. This floor was to serve as residence for their daughter, Maria Teresa Sison. The construction prompted Alolino to file another complaint with the Building Official of Taguig.

The building official issued a second Notice of Illegal Construction against the respondents on May 6, 2002, directing the respondents to desist from their illegal construction.[5]

On May 17, 2002, the Office of the Barangay Council of Tuktukan issued a certification that no settlement was reached between the parties relative to Alolino's 1994 complaint.[6]

The respondents did not comply with the directive from the building official. This prompted Alolino to send them a letter dated January 23, 2003, demanding the removal of their illegally constructed structure.

Despite receipt of the demand letter, the respondents refused to comply. Thus, on February 14, 2003, Alolino filed a complaint against the respondents with the RTC praying for: (1) the removal of the encroaching structure; (2) the enforcement of his right to easement of light and view; and (3) the payment of damages. Alolino claimed that the respondents' encroaching structure deprived him of his light and view and obstructed the air ventilation inside his house. The complaint was docketed as **Civil Case No. 69320**.

In their answer,[7] the respondent spouses denied that Alolino had a cause of action against them. They alleged that they had occupied their lot where they constructed their house in 1955, long before the plaintiff purchased his lot in the 70s. They further alleged that plaintiff only has himself to blame because he constructed his house up to the very boundary of his lot without observing the required setback. Finally, they emphasized that the wall of their house facing Alolino's does not violate the latter's alleged easement of light and view because it has no window.

The respondents also admitted to them that they did not secure a building permit because the property was constructed on a municipal/*barrio* road. They claimed, however, that on March 1, 2004, the *Sangguniang Bayan* of Taguig (*the Sanggunian*) reclassified the property as a residential lot from its prior classification as a *barrio*/municipal road.[8]

During the trial, both parties moved for an ocular inspection of the premises. Consequently, on November 19, 2007, the RTC ordered the branch clerk of court, the deputy sheriff, and the stenographer to conduct the inspection. The ocular inspection was conducted on December 6, 2007.

In their report dated January 30, 2008,[9] the inspection team confirmed that the respondents' property blocked the entry of light and air to Alolino's house.

On April 20, 2009, the RTC rendered a judgment ordering the respondents to remove their illegal structure obstructing Alolino's right to light and view.

The RTC found that Alolino had already previously acquired an easement of light and

view and that the respondents subsequently blocked this easement with their construction. It held that the respondents' illegal construction was a private nuisance with respect to Alolino because it prevented him from using the back portion of his property and obstructed his free passage to the *barrio*/municipal road. The court farther held that the respondents' house was a public nuisance, having been illegally constructed on a *barrio* road - a government property - without a building permit.

The respondents appealed the decision to the CA and was docketed as **CA-G.R. CV No. 94524**.

On July 8, 2011, the CA reversed the RTC decision and dismissed the complaint for lack of merit.

The CA held (1) that Alolino had not acquired an easement of light and view because he never gave a formal prohibition against the respondents pursuant to Article 668[10] of the Civil Code; (2) that Alolino was also at fault, having built his fyouse up to the edge of the property line in violation of the National Building Code; [11] (3) that Alolino had not acquired an easement of right of way to the *barrio* Road; and (4) that the respondents' house was not a public nuisance because it did not endanger the safety of its immediate surroundings.

The CA concluded that the Government had already abandoned the *barrio* road pursuant to the 2004 Sanggunian resolution. It further held that the respondents' property could not be demolished, citing Section 28 of the Urban Development and Housing Act.[12]

Alolino moved for reconsideration on July 28, 2011.

On September 28, 2011, the CA denied the motion for reconsideration and maintained that Alolino had not acquired an easement of light and view.

Thus, on November 15, 2011, Alolino filed the present petition for review on *certiorari*.

The Petition

Alolino insists (1) that he acquired an easement of light and view by virtue of a title because the respondents constructed their house on a *barrio* road; (2) that the provision of Sec. 708 of the National Building Code and Article 670 of the Civil Code prescribing the setbacks is inapplicable because the property is adjacent to a *barrio* road; (3) that he has a right of way over the lot occupied by the respondents because it is a barrio road; and (4) that the respondents' house/*sari sari* store is a nuisance *per se*.

In its comment, the respondent counters (1) that Alolino has not acquired an easement of light and view or an easement of right of way, by either prescription or title; (2) that Alolino is at fault for constructing his house up to the edge of his property line without observing the setbacks required in Article 670 of the Civil Code and Section 702 of the National Building Code; and (3) that their house/*sari sari* store is not a nuisance because it is not a serious threat to public safety and the

Sanggunian has already reclassified the lot as residential.

Our Ruling

We find the petition meritorious.

There is no dispute that respondents built their house/*sari sari* store on government property. Properties of Local Government Units (LGUs) are classified as either property for public use or patrimonial property.[13] Article 424 of the Civil Code distinguishes between the two classifications:

> **Article 424.** Property for public use, in the provinces, cities, and municipalities, consist of the **provincial roads, city streets, municipal streets**, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.
>
> All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.[14] (emphasis supplied)

From the foregoing, the *barrio* road adjacent to Alolino's house is property of public dominion devoted to public use.

We find no merit in the respondents' contention that the Local Government of Taguig had already withdrawn the subject *barrio* road from public use and reclassified it as a residential lot. The Local Government Code[15] (*LGC*) authorizes an LGU to withdraw a local road from public use under the folio wing conditions:

> **Section 21.** *Closure and Opening of Roads*. -
>
> (a) A local government unit may, **pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction**; Provided, however, That in case of permanent closure, **such ordinance** must be approved by at least two-thirds (2/3) of all the members of the Sanggunian, and when necessary, an adequate substitute for the. public facility that is subject to closure is provided.
> (b) No such way or place or any part thereof shall be permanently closed without making provisions for the maintenance of public safety therein. **A property thus permanently withdrawn from public use may be used or conveyed for any purpose for which other real property belonging to the local government unit concerned may be lawfully used or conveyed.** x x x

To convert a *barrio* road into patrimonial property, the law requires the LGU to enact an ordinance, approved by at least two-thirds (2/3) of the Sanggunian members, permanently closing the road.

In this case, the Sanggunian did not enact an ordinance but merely passed a resolution. The difference between an ordinance and a resolution is settled in

jurisprudence: an ordinance is a law but a resolution is only a declaration of sentiment or opinion of the legislative body.[16]

Properties of the local government that are devoted to public service are deemed public and are under the absolute control of Congress.[17] Hence, LGUs cannot control or regulate the use of these properties unless specifically authorized by Congress, as is the case with Section 21 of the LGC.[18] In exercising this authority, the LGU must comply with the conditions and observe the limitations prescribed by Congress. The Sanggunian's failure to comply with Section 21 renders ineffective its reclassification of the *barrio* road.

As a *barrio* road, the subject lot's purpose is to serve the benefit of the collective citizenry. It is outside the commerce of man and as a consequence: (1) it is not alienable or disposable;[19] (2) it is not subject to registration under Presidential Decree No. 1529 and cannot be the subject of a Torrens title;[20] (3) it is **not susceptible to prescription**;[21] (4) it cannot be leased, sold, or otherwise be the object of a contract;[22] (5) it is not subject to attachment and execution;[23] and (6) it **cannot be burdened by any voluntary easements**.[24]

An easement is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner or for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong.[25] **Continuous and apparent easements** may be acquired by virtue of a title or by prescription of ten years.[26] Meanwhile, **continuous but non-apparent easements and discontinuous ones** can only be acquired by virtue of a title.[27] Used in this sense, title refers to a juridical justification for the acquisition of a right. It may refer to a law, a will, a donation, or a contract.

We must distinguish between the respondents' house and the land it is built on. The land itself is public property devoted to public use. It is not susceptible to prescription and cannot be burdened with voluntary easements. On the other hand, the respondents' house is private property, albeit illegally constructed on public property. It can be the object of prescription and can be burdened with voluntary easements. Nevertheless, it is indisputable that the respondents have not voluntarily burdened their property with an easement in favor of Alolino.

An easement of a right of way is discontinuous and cannot be acquired through prescription.[28] On the other hand, an easement of light and view can be acquired through prescription counting from the time when the owner of the dominant estate formally prohibits the adjoining lot owner from blocking the view of a window located within the dominant estate.[29]

Notably, Alolino had not made (and could not have made) a formal prohibition upon the respondents prior to their construction in 1994; Alolino could not have acquired an easement of light and view through prescription. Thus, only easements created by law can burden the respondents' property.

The provisions on legal easements are found in Book II, Title VII, Chapter 2 of the Civil Code whose specific coverage we list and recite below for clarity and